

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANTONIO S. BEATTIE,

Plaintiff

V.

DEPARTMENT OF CORRECTIONS
SCI-MAHANoy, *et al.*,

Defendants

CIVIL NO. 1:CV-08-0622

(Judge Rambo)

MEMORANDUM and ORDER

The background of this order is as follows. Plaintiff Antonio S. Beattie, formerly an inmate at the Mahanoy State Correctional Institution (“SCI-Mahanoy”) in Frackville, Pennsylvania, commenced this *pro se* action by filing a civil rights complaint pursuant to the provisions of 42 U.S.C. § 1983.

Presently pending are Plaintiff's motions to quash the motions to dismiss filed on behalf of Defendants Slezosky and Miller (Doc. 23) and Defendants the Department of Corrections, Klem, Kramer, Mason, Youron, Pennsylvania State Police, and Kofluk ("Commonwealth Defendants") (Doc. 25). Also pending is a motion to strike (Doc. 41) filed on behalf of the Commonwealth Defendants. These motions are disposed of below.

I. Plaintiff's Motions to Quash

In his motions to quash (Docs. 23, 25), Plaintiff requests that the court quash the motions to dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) filed on behalf of Defendants Slezosky and Miller (Doc. 11) and the Commonwealth Defendants (Doc. 16). In his motions and supporting briefs (Docs. 24, 26), Plaintiff requests that the motions to dismiss be quashed because Fed. R. Civ. P. 12(b)(6) is inapplicable. However, the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 12(b)(6), "govern the procedure in all civil actions and proceedings in the United States district courts." Fed. R. Civ. P. 1. Because the instant action is a civil action pending in the United States District Court for the Middle District of Pennsylvania, Federal Rule of Civil Procedure 12(b)(6) applies. Therefore, Plaintiff's motions to quash (Doc. 23, 25) will be denied.

The court notes that Plaintiff did not file briefs in opposition to the motions to dismiss filed on behalf of Defendants Slezosky and Miller (Doc. 11) and the Commonwealth Defendants (Doc. 16). Rather, he set forth his opposition to these motions in his briefs in support of his motions to quash (Docs. 24, 26). Accordingly, the court will construe these filings (Docs. 24, 26) as Plaintiff's opposition to the motions to dismiss (Docs. 11, 16).

II. Commonwealth Defendants' Motion to Strike

In their motion to strike (Doc. 41), the Commonwealth Defendants request that the document filed by Plaintiff on September 15, 2008 entitled "Reply Brief of Plaintiff Opposing Attorney General's Reply Brief for SCI Mahanoy" (Doc. 39) be stricken. The Commonwealth Defendants argue that the document should be stricken because it was untimely filed and filed without leave of court. (*See* Doc. 42 at 2.)

The court agrees that the document should be stricken because Plaintiff did not obtain leave of court to file it. On June 25, 2008, the Commonwealth Defendants filed their motion (Doc. 16) and a supporting brief (Doc. 17) in accordance with M.D. Pa. Local R. 7.5. As set forth above, the court will construe Plaintiff's brief (Doc. 26) in support of his motion to quash the Commonwealth Defendants' motion as his opposition to that motion. Accordingly, Plaintiff filed his opposition brief in accordance with M.D. Pa. Local. R. 7.6. On July 22, 2008, the Commonwealth Defendants filed their "reply/opposition brief" (Doc. 28). This brief served both as the Commonwealth Defendants' opposition to Plaintiff's motion to quash (Doc. 25) and their reply to his opposition to their motion to dismiss (Doc. 16) in accordance with M.D. Pa Local. R. 7.7.

Therefore, briefing on the Commonwealth Defendants' motion to dismiss (Doc. 16) was completed on July 22, 2008. After a reply brief has been filed, "[n]o further

briefs may be filed without leave of court.” M.D. Pa. Local R. 7.7. Plaintiff did not move for leave of court to file an additional brief, and therefore his “Reply Brief of Plaintiff Opposing Attorney General’s Reply Brief for SCI Mahanoy” (Doc. 39) will be stricken.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Plaintiff’s motions to quash (Docs. 23, 25) are **DENIED**.
2. Plaintiff’s brief in support of his motion to quash (Doc. 24) is construed as his brief in opposition to the motion to dismiss (Doc. 11) filed on behalf of Defendants Slezosky and Miller. The Clerk of Court shall amend the docket accordingly.
3. Plaintiff’s brief in support of his motion to quash (Doc. 26) is construed as his brief in opposition to the motion to dismiss (Doc. 16) filed on behalf of the Commonwealth Defendants. The Clerk of Court shall amend the docket accordingly.
4. The Commonwealth Defendants’ motion to strike (Doc. 41) is **GRANTED**. Plaintiff’s “Reply Brief of Plaintiff Opposing Attorney General’s Reply Brief for SCI Mahanoy” (Doc. 39) shall be **STRICKEN** from the record.

s/Sylvia H. Rambo

Sylvia H. Rambo

United States District Judge

Dated: September 22, 2008.